Paper No. 9
SIMMS/md

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE
TTAB JAN. 29, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Dan Cook and David Cook

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Serial No. 75/008,728

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Bernhard Kreten for Dan Cook and David Cook dba St. Helena Brewing Company.

Samuel E. Sharper, Jr., Trademark Examining Attorney, Law Office 101 (Christopher Wells, Managing Attorney)

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Before Sams, Simms and Quinn, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Dan Cook and David Cook doing business as St. Helena Brewing Company (applicants) have appealed from the final refusal of the Trademark Examining Attorney to register the mark SILVERADO ALE for beer.[1] The Examining Attorney has

[1] Application Serial No. 75/008,728, filed October 20, 1995, based upon applicants' bona fide intention to use the mark in commerce under Section 1(b) of the Act, 15 USC §1051(b). In their appeal brief applicants have submitted a disclaimer of the word "ALE" apart from the mark as shown.

refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 1,130,989, issued February 12, 1980 (combined Sections 8 and 15 filed) for the mark SILVERADO for vodka, and Registration No. 1,212,658, issued October 12, 1982 (combined Sections 8 and 15 filed) covering the mark shown below for vodka.

According to Office records, these registrations are currently owned by Guild Wineries and Distilleries Corporation.

We affirm.

Essentially, the Examining Attorney argues that applicants' mark and the registrant's marks all contain a dominant feature (the word SILVERADO) such that the respective marks are very similar in sound, appearance and meaning. The Examining Attorney has also pointed out that applicants have made no arguments with respect to the similarities of the marks at issue.

With respect to the goods, the Examining Attorney argues that beer and vodka are related alcoholic beverages

which may be sold in the same channels of trade to the same class of prospective purchasers. That is to say, these goods may be found in liquor stores and bars and a typical consumer may drink more than one type of beverage and may shop for different alcoholic beverages in the same liquor stores, according to the Examining Attorney. Finally, the Examining Attorney argues that these goods are not necessarily expensive items requiring careful thought or expertise in their purchase but may be purchased on a casual basis. The Examining Attorney relies upon the case of Schieffelin & Co. v. Molson Companies Ltd., 9 USPQ2d 2069 (TTAB 1989), wherein the Board found likelihood of confusion between the marks BRAS D'OR for brandy and BRADOR for beer.

In their appeal brief, applicants indicate that shortly after the filing of this application applicants began using their mark in association with their goods as well as their microbrewery. Applicants argue that the goods are different, that the consumers to whom the goods are directed are different classes of consumers and that the trade channels in which the goods travel are distinct. In this regard, applicants argue that their beer is brewed in a microbrewery in Napa Valley, California, and sold through this brewery to clientele who are traveling through

the Napa Valley. Vodka, on the other hand, is sold in liquor stores and bars and would not be found at applicants' microbrewery, according to applicants. Applicants also argue that distilled beverages such as vodka are more expensive and are considered to be a "sophisticated drink."

> The average consumer would not be confused between vodka, the registrant's goods and applicant's [sic] beer produced and sold in a micro-brewery. Even if these goods were sold in the same environment, for example a grocery store, consumers would still not likely be confused thereby… The consumer who is interested in consuming this type of hard liquor, will not confuse this product with "beer" produced and sold in a micro-brewery.

Applicants' appeal brief, 5.

As the Examining Attorney has noted, the problem with applicants' argument is that there is no restriction with respect to the channels of trade in applicants' application, or, for that matter, in the registrations. Accordingly, we must presume that the respective products travel in all normal channels of trade for those alcoholic beverages to all normal purchasers of those goods. See Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1816 (Fed. Cir. 1987). Accordingly, without any restriction, we must assume that

applicants' beer and registrant's vodka are sold in some of the same retail liquor stores and bars.

Of course, we agree with applicants that consumers are not likely to purchase applicants' beer thinking that it is registrant's vodka. But this kind of mistake is not the only kind of confusion that is intended to be prevented by Section 2(d) in the Act. In this case, the question is whether a consumer, aware of registrant's SILVERADO vodka who then sees applicants' SILVERADO ALE will be likely to believe that both products come from the same source or that registrant has sponsored or approved of applicants' beer. We agree with the Examining Attorney that this type of confusion is likely. As the Examining Attorney contends, consumers may drink more than one type of alcoholic beverage and may shop for different alcoholic beverages in the same liquor store. Also, the fact that these goods are sold under almost identical marks is a strong factor contributing to our belief that confusion is likely.

Decision: The refusal of registration is affirmed.

J. D. Sams

R. L. Simms

T. J. Quinn
Administrative Trademark
Judges, Trademark Trial and
Appeal Board